

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 01-0299P**

**Adjusted Gross Income Tax  
For Calendar Year Ended December 31, 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer is in the business of importing and marketing oil products such as polyethylene and is located out of the country. Although the taxpayer is not subject to gross income tax, it is liable for an apportioned amount of adjusted gross income tax because it has inventory in the state of Indiana.

Taxpayer filed a penalty protest letter dated August 16, 2001.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states that it had filed its returns in a timely and accurate manner, there was no intent to deprive the state of any taxes due, and the audit primarily relates to the state's treatment of interest income resulting from an intercompany loan with taxpayer's parent. At the time the returns were filed, taxpayer took the position that the interest was non-business income because the parent is an out of country company with no presence in Indiana or the United States. Taxpayer felt that the interest should be treated as non-business income since the company had no connection with U.S. operations.

The taxpayer received interest income as a result of a loan to the taxpayer's parent corporation and interest received as a result of tax refunds. Since these transactions are dependent upon and

contribute to the operations of the taxpayer's economic enterprise as a whole and were created in the regular and ordinary course of business, the income received is deemed to be business income and must be apportioned.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer reported its interest income as nonbusiness income and has not provided reasonable cause to allow the department to waive the penalty.

#### **FINDING**

Taxpayer's protest is denied.